



MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606-6357

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JUL 01 2011

In re Application
William Phelan et al.
Application No. 09/993,992
Filed: November 14, 2001
Attorney Docket No. **29804/36569A**

OFFICE OF PETITIONS
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: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
:

This is in response to the "PETITION UNDER 37 C.F.R. § 1.705(B) - APPLICATION FOR PATENT TERM ADJUSTMENT" filed June 1, 2011. Applicant requests that the determination of patent term adjustment be corrected from 1069 days to 1027 days.

The application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED**.

On March 1, 2011 the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1069 days. On June 1, 2011, applicant timely submitted the instant application for patent term adjustment¹. Applicant maintains that a Notice of Appeal was filed on April 10, 2009, along with a Pre-Appeal Brief Request for Review and that the Patent Office responded with a Notice of Panel Decision from Pre-Appeal Brief Review on April 30, 2009, giving the Applicants a 3-month window for responding with either an Appeal Brief for a Request for Continued Examination (i.e. July 3, 2009). The Applicants filed a Request for Continued Examination with the Patent Office on September 10, 2009. Therefore, the Applicants should have a deduction of 42 days applied to the Patent Term Adjustment as reported in the Notice of Allowance.

Applicant's arguments have been considered, but not found to be persuasive. Applicants are advised that in this instance the filing of the RCE is not a reply under 37 CFR 1.704(b), is not a supplemental paper subject to reduction under 37 CFR 1.704(c)(8) and does not cure an omission under 37 CFR 1.704(c)(7).

Pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of

¹ PALM records indicate that the issue fee was also paid on June 1, 2011.

the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

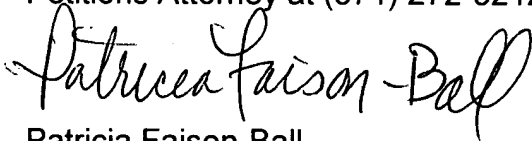
(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 1069 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions